

## Department of Veterans Affairs

## § 3.251

who is residing in a foreign country) will be held to exist where the monthly income does not exceed:

(i) \$400 for a mother or father not living together;

(ii) \$660 for a mother and father, or remarried parent and spouse, living together;

(iii) \$185 for each additional “member of the family” as defined in paragraph (b)(2).

(Authority: 38 U.S.C. 102(a))

(2) *Excess income.* Where the income exceeds the monthly amounts stated in paragraph (a)(1) of this section dependency will be determined on the facts in the individual case under the principles outlined in paragraph (b) of this section. In such cases, dependency will not be held to exist if it is reasonable that some part of the corpus of the claimant’s estate be consumed for his or her maintenance.

(3) *Foreign residents.* There is no conclusive presumption of dependency. Dependency will be determined on the facts in the individual case under the principles outlined in this section.

(b) *Basic rule.* Dependency will be held to exist if the father or mother of the veteran does not have an income sufficient to provide reasonable maintenance for such father or mother and members of his or her family under legal age and for dependent adult members of the family if the dependency of such adult member results from mental or physical incapacity.

(1) “Reasonable Maintenance” includes not only housing, food, clothing, and medical care sufficient to sustain life, but such items beyond the bare necessities as well as other requirements reasonably necessary to provide those conveniences and comforts of living suitable to and consistent with the parents’ reasonable mode of life.

(2) “Member of the family” means a person (other than spouse) including a relative in the ascending as well as descending class, whom the father or mother is under moral or legal obligation to support. In determining whether other members of the family under legal age are factors in necessary expenses of the mother or father, consideration will be given to any income from business or property (including

trusts) actually available, directly or indirectly, to the mother or father for the support of the minor but not to the corpus of the estate or the income of the minor which is not so available.

(c) *Inception of dependency.* The fact that the veteran has made habitual contributions to the father or mother, or both, is not conclusive evidence that dependency existed but will be considered in connection with all other evidence. In death claims, it is not material whether dependency arose prior or subsequent to the veteran’s death. (See § 3.1000(d)(3) as to accrued.)

(Authority: 38 U.S.C. 102(a))

(d) *Remarriage.* Dependency will not be denied solely because of remarriage (38 U.S.C. 102(b)(1)). Compensation may be continued if the parent submits evidence to show that dependency exists, considering the combined income and expenses of the parent and spouse.

[28 FR 29, Jan. 1, 1963, as amended at 40 FR 16065, Apr. 9, 1975; 49 FR 47004, Nov. 30, 1984; 61 FR 20727, May 8, 1996]

### § 3.251 Income of parents; dependency and indemnity compensation.

(a) *Annual income limitations and rates.* (1) Dependency and indemnity compensation is not payable to a parent or parents whose annual income exceeds the limitations set forth in 38 U.S.C. 1315 (b), (c), or (d).

(2) Where there is only one parent, and the parent has remarried and is living with his or her spouse, dependency and indemnity compensation will be paid under either the formula in 38 U.S.C. 1315(b)(1) or the formula in 38 U.S.C. 1315(d), whichever will provide the greater monthly rate of dependency and indemnity compensation. The total combined annual income of the parent and spouse will be counted.

(Authority: 38 U.S.C. 1315)

(3) Where the claim is based on service in the Commonwealth Army of the Philippines, or as a guerrilla or as a Philippine Scout under section 14, Pub. L. 190, 79th Congress, the income limitation will be at a rate of \$0.50 for each dollar. See § 3.100(b).

(Authority: 38 U.S.C. 107)

(4) If the remarriage of a parent has been terminated, or the parent is separated from his or her spouse, the rate of dependency and indemnity compensation for the parent will be that which would be payable if there were one parent alone or two parents not living together, whichever is applicable.

(5) Where there are two parents living and only one parent has filed claim, the rate of dependency and indemnity compensation will be that which would be payable if both parents had filed claim.

(b) *Basic rule.* Payments of any kind or from any source will be counted as income unless specifically excluded. Income will be counted for the calendar year in which it is received and total income for the full calendar year will be considered except as provided in § 3.260.

[28 FR 29, Jan. 1, 1963, as amended at 31 FR 14455, Nov. 10, 1966; 40 FR 16065, Apr. 9, 1975; 41 FR 15411, Apr. 13, 1976; 60 FR 18355, Apr. 11, 1995]

**§ 3.252 Annual income; pension; Mexican border period and later war periods.**

(a) *Annual income limitations; old-law pension.* Where the right to old-law pension is payable under section 306(b) of Pub. L. 95–588 (92 Stat. 2497), pension is not payable if the pensioner's annual income exceeds the income limitations prescribed by § 3.26(c).

(b) *Annual income and net worth limitations; Pub. L. 86–211.* Pension is not payable to a veteran, surviving spouse or child whose annual income exceeds the limitations set forth in 38 U.S.C. 1521, 1541 or 1542; or to a veteran, surviving spouse or child if it is reasonable that some part of the claimant's estate be consumed for his or her maintenance. Where a veteran and spouse are living together, the separate income of the spouse will be considered as the veteran's income as provided in § 3.262(b).

(Authority: 38 U.S.C. 1543)

(c) *Basic rule.* Payments of any kind or from any source will be counted as income unless specifically excluded. Income will be counted for the calendar year in which it is received and total

income for the full calendar year will be considered except as provided in § 3.260.

(d) *Veteran with a spouse.* For the purpose of determining eligibility under paragraph (b) of this section the pension rates provided by 38 U.S.C. 1521(c) may be authorized for a married veteran if he or she is living with or, if estranged, is reasonably contributing to the support of his or her spouse. The determination of "reasonable" contribution will be based on all the circumstances in the case, considering the income and estate of the veteran and the separate income and estate of the spouse. Apportionment of the veteran's pension under § 3.451 meets the requirement of reasonable contribution.

(e) *Surviving spouse with a child—(1) Child.* The term "child" means a child as defined in § 3.57. Where a veteran's child is born after the veteran dies, the surviving spouse will not be considered a surviving spouse with a child prior to the child's date of birth.

(2) *Veteran's child not in surviving spouse's custody.* Where the veteran was survived by a surviving spouse and by a child, the income increments for a surviving spouse and child apply even though the child is not the child of the surviving spouse and not in his or her custody.

(3) *Income of child.* The separate income received by a child or children, regardless of custody, will not be considered in computing the surviving spouse's income. Where the separate income of the child is turned over to the surviving spouse, only so much of the money as is left after deducting any expenses for maintenance of the child will be considered the surviving spouse's income.

(4) *Alternative rate.* Whenever the monthly pension rate payable to the surviving spouse under the formula in 38 U.S.C. 1541(c) is less than the rate payable for one child under section 1542 if the surviving spouse were not entitled, the surviving spouse will be paid the child's rate.

(f) *Income over maximum; reduced aid and attendance allowance.* Beginning January 1, 1977, veterans in need of regular aid and attendance who are not receiving pension because their income